

**IN THE UNITED STATES DISTRICT COURT  
IN THE WESTERN DISTRICT OF OKLAHOMA**

**In re: Farmers Insurance Co., Inc.  
FCRA Litigation.**

**Judge Friot**

) **Western Dist. Case No. CIV-03-158-F**  
)  
) **MDL No. 1564**  
)  
) **This document relates to Case**  
) **No. CIV-04-917-F (Williams)**

**THIRD AMENDED COMPLAINT**

1. Plaintiff, Kevin L. Williams is over the age of nineteen (19) years and a resident of Detroit, in Wayne County, Michigan.

2. Defendant, Farmers Insurance Exchange is a foreign corporation which does business in Michigan including the sale of homeowners and automobile insurance policies.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, in that this dispute involves predominant issues of federal law. Defendant is liable to Plaintiff pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* (FCRA) as well as other applicable laws.

**FACTUAL ALLEGATIONS**

4. Plaintiff was a holder of a policy or policies of automobile insurance issued by Defendant.

5. Plaintiff's policy number was 16183 53 62 and the policy was last in force on November 21 2002.

6. Defendant has utilized, among other factors, a review of the Plaintiff's consumer report or other information from a Consumer Reporting Agency (hereinafter "CRA") in determining premiums, terms and/or underwriting for the policy(s) issued to Plaintiff. Defendant is a "user" of consumer reports and information from CRA's.

7. On information and belief the CRA utilized by Defendant was ChoicePoint, Inc., (hereinafter “ChoicePoint”).

8. Based on an analysis including Plaintiff’s consumer report and/or other information obtained from ChoicePoint and/or other CRA(s) Defendant has taken action adverse to the Plaintiff regarding a policy of automobile insurance.

9. The defendant has a scoring system in which places its policyholders in groups or categories based in whole or in part on information it receives from CRA’s.

10. The placement of consumers such as plaintiff into one of the less favored categories constitutes an adverse action pursuant to § 1681a(k) because persons with a more favored score or in a more favored category receive insurance on more favorable terms than those who are less favored.

11. Plaintiff alleges that he did not receive automobile insurance from the defendant on its most favorable terms based on information that the defendant used and received from ChoicePoint and/or some other CRA.

12. Defendant failed to notify Plaintiff of the access and use of his consumer report or adverse action based on the same as required by 15 U.S.C. § 1681m(a)(1), (2) and (3).

13. Plaintiff obtained his “CLUE” report from ChoicePoint on or about November 9, 2002. “CLUE” stands for, “Comprehensive Loss Underwriting Exchange” and is a product of ChoicePoint. After examining the report plaintiff learned that it contained inaccurate information about his driving and insurance claim history. The “CLUE” report also indicated that the defendant had accessed plaintiff’s report on October 11, 2002. The defendant sent a notice to Plaintiff, dated October 30, 2002, which stated in part that “The policy documents that you have recently or will shortly receive contain a change resulting from investigative information.” Shortly thereafter plaintiff received a notice that his insurance with defendant was canceled because “Investigation reveals accidents for unknown drivers”.

14. The notices did not identify the CRA used.

15. Even if the notices had stated that ChoicePoint or other CRA had been used they still would not comply with 1681m(a)(2) and (3) in at least the following respects because they did not include:

- a. the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished

the report; and

- b. a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- c. notice to the consumer the right to obtain, under section 1681j of the FCRA, a free copy of a consumer report on the consumer from the consumer reporting agency used; and
- d. an indication of the 60-day period under the FCRA for obtaining such a copy; and
- e. a notice of the right to dispute, under section 1681i of the FCRA, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

16. Defendant otherwise negligently and/or willfully violated the FCRA by at least failing to inform Plaintiff of adverse action taken based in whole or in part on a consumer report or information from a CRA, failing to disclose the source of the consumer report considered, failing to disclose the identity of the CRA used and has otherwise violated the FCRA. It is the policy and practice of defendant to use the consumer reports of its current and potential customers and to fail to comply with the FCRA in so doing.

**COUNT I**  
**(FCRA Violation)**

17. Plaintiff hereby incorporates paragraphs 1 – 16 as though fully set out herein.

18. Defendant is liable to Plaintiff for failing to comply with FCRA in that it is the defendant's practice to take adverse action with regard to consumers based in whole or in part on information contained in the consumer's report, to fail to give notice as required by the FCRA and to otherwise violate the FCRA with regard to its use of consumer reports.

WHEREFORE, Plaintiff prays that after all due proceedings that there be judgment herein in favor of Plaintiff and against Defendant, as follows:

That a judgment be rendered herein in favor of Plaintiff and against Defendant for statutory damages, attorneys' fees and costs incurred. He further prays for all such additional, general, injunctive and equitable relief as may be necessary and proper in the premises.

s/ Earl P. Underwood, Jr.  
Earl P. Underwood, Jr.  
Attorney for Plaintiff  
21 South Section Street  
Fairhope, Alabama 36532  
Voice 251-990-5558  
FAX 251-990-0626  
epunderwood@alalaw.com

## **Certificate of Service**

I hereby certify that on October 26, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Bruce N Adams**

[bruce@riceandadams.com](mailto:bruce@riceandadams.com)

**Jeffrey J Angelovich**

[jangelovich@nixlawfirm.com](mailto:jangelovich@nixlawfirm.com)

[bethgoodman@nixlawfirm.com](mailto:bethgoodman@nixlawfirm.com)

**William Stephen Benesh**

[sbenesh@bracepatt.com](mailto:sbenesh@bracepatt.com)

[steve.benesh@bracepatt.com](mailto:steve.benesh@bracepatt.com)

**Ileana M Blanco**

[ileana.blanco@bracepatt.com](mailto:ileana.blanco@bracepatt.com)

[leticia.teran@bracepatt.com](mailto:leticia.teran@bracepatt.com)

**Douglas Bowdoin**

[dbowdoin@bowdoinlaw.com](mailto:dbowdoin@bowdoinlaw.com)

[ctassi@bowdoinlaw.com](mailto:ctassi@bowdoinlaw.com)

**Rod Bowdoin**

[rodbowdoin@bellsouth.net](mailto:rodbowdoin@bellsouth.net)

**Marcus Neil Bozeman**

[mbozeman@cauleybowman.com](mailto:mbozeman@cauleybowman.com)

[twyatt@cauleybowman.com](mailto:twyatt@cauleybowman.com)

**David H Burrow**

[bpfirm@bpcd.com](mailto:bpfirm@bpcd.com)

[dburrow@bpcd.com](mailto:dburrow@bpcd.com)

**Gary D Corum**

[gary@wecc-law.com](mailto:gary@wecc-law.com)

[robin@wecc-law.com](mailto:robin@wecc-law.com)

**D Nathan Coulter**

[nate@wecc-law.com](mailto:nate@wecc-law.com)

[robin@wecc-law.com](mailto:robin@wecc-law.com)

**David R. Donaldson**

[davidd@dglawfirm.com](mailto:davidd@dglawfirm.com)

**Bryan S Dumesnil**

[bryan.dumesnil@bracepatt.com](mailto:bryan.dumesnil@bracepatt.com)

[ruth.struthers@bracepatt.com](mailto:ruth.struthers@bracepatt.com)

**Barnes H Ellis**

[bhellis@stoel.com](mailto:bhellis@stoel.com)

[kpmckenzie@stoel.com](mailto:kpmckenzie@stoel.com)

[docketclerk@stoel.com](mailto:docketclerk@stoel.com)

**John G Emerson**

[John@emersonfirm.com](mailto:John@emersonfirm.com)

**Stephen Engstrom**

[stephen@wecc-law.com](mailto:stephen@wecc-law.com)

[marilyn@wecc-law.com](mailto:marilyn@wecc-law.com)

**William B Federman**

[wfederman@aol.com](mailto:wfederman@aol.com)

[law@federmanlaw.com](mailto:law@federmanlaw.com)

[ngb@federmanlaw.com](mailto:ngb@federmanlaw.com)

**Richard C Ford**

[fordr@crowedunlevy.com](mailto:fordr@crowedunlevy.com)

[stambach@crowedunlevy.com](mailto:stambach@crowedunlevy.com)

[ECF@crowedunlevy.com](mailto:ECF@crowedunlevy.com)

**Rodney J Heggy**

[rheggy@cox.net](mailto:rheggy@cox.net)

[tah@federmanlaw.com](mailto:tah@federmanlaw.com)

**W Christian Hoyer**

[choyer@jameshoyer.com](mailto:choyer@jameshoyer.com)

**Larry D Ottaway**

[larryottaway@oklahomacounsel.com](mailto:larryottaway@oklahomacounsel.com)

[ptill@jameshoyer.com](mailto:ptill@jameshoyer.com)

**David W Jones**

[djones@brsfirm.com](mailto:djones@brsfirm.com)

[tpeebles@brsfirm.com](mailto:tpeebles@brsfirm.com)

**Shirley G Jones**

[shirley@wecc-law.com](mailto:shirley@wecc-law.com)

**Robert Q Keith**

[rkeith@keith-weber.com](mailto:rkeith@keith-weber.com)

**Kathleen Clark Knight**

[kknight@jameshoyer.com](mailto:kknight@jameshoyer.com)

[deinsmann@jameshoyer.com](mailto:deinsmann@jameshoyer.com)

[dstephens@jameshoyer.com](mailto:dstephens@jameshoyer.com)

**Joe K Longley**

[joe@joelongley.com](mailto:joe@joelongley.com)

**Ian B Lyngklip**

[ianlaw@pop.net](mailto:ianlaw@pop.net)

[ianlyngklip@comcast.net](mailto:ianlyngklip@comcast.net)

**Philip K Maxwell**

[phil@philmaxwell.com](mailto:phil@philmaxwell.com)

**Lori A McAllister**

[lmcallister@dykema.com](mailto:lmcallister@dykema.com)

[kschaeffer@dykema.com](mailto:kschaeffer@dykema.com)

**Ralph D McBride**

[ralph.mcbride@bracepatt.com](mailto:ralph.mcbride@bracepatt.com)

[maria.maldonado@bracepatt.com](mailto:maria.maldonado@bracepatt.com)

**Stephen Lynn McCleery**

[smccleery@austin.rr.com](mailto:smccleery@austin.rr.com)

**Richard E Norman**

[rnorman@cdnlawfirm.com](mailto:rnorman@cdnlawfirm.com)

[cgillespie@cdnlawfirm.com](mailto:cgillespie@cdnlawfirm.com)

[tcrowley@cdnlawfirm.com](mailto:tcrowley@cdnlawfirm.com)

**Todd P Taylor**

[taylort@crowedunlevy.com](mailto:taylort@crowedunlevy.com)

[ecf@crowedunlevy.com](mailto:ecf@crowedunlevy.com)

[foliartfirm@oklahomacounsel.com](mailto:foliartfirm@oklahomacounsel.com)

[lynnecooper@oklahomacounsel.com](mailto:lynnecooper@oklahomacounsel.com)

**Susan B Pinkerton**

[sbp@federmanlaw.com](mailto:sbp@federmanlaw.com)

[law@federmanlaw.com](mailto:law@federmanlaw.com)

[slh@federmanlaw.com](mailto:slh@federmanlaw.com)

**Scott Poynter**

[scott@emersonfirm.com](mailto:scott@emersonfirm.com)

[tanya@emersonfirm.com](mailto:tanya@emersonfirm.com)

**Stephen A Redshaw**

[saredshaw@stoel.com](mailto:saredshaw@stoel.com)

[krepps@stoel.com](mailto:krepps@stoel.com)

[docketclerk@stoel.com](mailto:docketclerk@stoel.com)

**Jennifer F Sherrill**

[jfs@federmanlaw.com](mailto:jfs@federmanlaw.com)

[law@federmanlaw.com](mailto:law@federmanlaw.com)

[slh@federmanlaw.com](mailto:slh@federmanlaw.com)

**Lori M Silsbury**

[kschaeffer@dykema.com](mailto:kschaeffer@dykema.com)

**Terry A Smiljanich**

[tsmiljanich@jameshoyer.com](mailto:tsmiljanich@jameshoyer.com)

[deinsmann@jameshoyer.com](mailto:deinsmann@jameshoyer.com)

[dstephens@jameshoyer.com](mailto:dstephens@jameshoyer.com)

**Jason B Stephens**

[jason@stephensanderson.com](mailto:jason@stephensanderson.com)

[tracy@stephensanderson.com](mailto:tracy@stephensanderson.com)

**Tammy McClendon Stokes**

[tammys@dglawfirm.com](mailto:tammys@dglawfirm.com)

[tressyw@dglawfirm.com](mailto:tressyw@dglawfirm.com)

**David A Szwak**

[bjks1507@aol.com](mailto:bjks1507@aol.com)

[dszwak@bjswlaw.com](mailto:dszwak@bjswlaw.com)

**William P Wasson**

[wpw@federmanlaw.com](mailto:wpw@federmanlaw.com)

[winterss@crowedunlevy.com](mailto:winterss@crowedunlevy.com)

**Earl P Underwood, Jr**

[epunderwood@alalaw.com](mailto:epunderwood@alalaw.com)

[dclangford@mindspring.com](mailto:dclangford@mindspring.com)

Jess L Askew, III

[jaskew@williamsanderson.com](mailto:jaskew@williamsanderson.com)

**R Martin Weber, Jr**

[mweber@davis-davislaw.com](mailto:mweber@davis-davislaw.com)

[adavidson@davis-davislaw.com](mailto:adavidson@davis-davislaw.com)

**James C Wyly**

[jwyly@pattonhaltom.com](mailto:jwyly@pattonhaltom.com)

[pgrooms@pattonhaltom.com](mailto:pgrooms@pattonhaltom.com)

I further certify that I have mailed by United States Postal Service, first class postage prepaid, the documents to the following non-CM/ECF participants:

Timothy J Crowley  
Crowley Douglas & Norman LLP  
1301 McKinney Street, Suite 3500  
Houston, TX 77010

Howard Finkelstein  
Finkelstein & Krinsk  
501 W. Broadway Avenue, Suite 1250  
San Diego, CA 92101

J Mark Hart  
Haskell, Slaughter, Young & Rediker  
2001 Park Place North, Suite 1400  
Birmingham, AL 35203

Lesley Wardwell Hempfling  
Segal McCambridge Singer & Mahoney-  
AUSTIN  
100 Congress Avenue, Suite 700  
Austin, TX 78701

Mark D Leverett  
Leverett & Watts Law Firm  
1821 S. Broadway Avenue  
Little Rock, AR 72206

Bert S Nettles  
Haskell Slaughter Young & Rediker  
2001 Park Place North, Suite 1400  
Birmingham, AL 35203-2700

Ron Parry  
Parry Deering Futscher & Sparks  
128 East 2nd Street  
Covington, KY 41012-0472

Regenea K Thompson  
Arkansas Insurance Department  
1200 West 3rd Street  
Little Rock, AR 72201

/s/ Earl P. Underwood, Jr.  
Of Counsel